DETAILED ACTION

Status of the Claims

1. This Action is in response to the decision by the Board of Appeals and Interferences dated 25 March 2010.

2. The previous rejections of claims 1-6 and 12-15 in the Examiner's Answer mailed 23 December 2008 are withdrawn in view of the decision by the Board of Appeals and Interferences.

3. The previous rejections of claims 7-9 and 16-18 in the Examiner's Answer mailed 23 December 2008 are maintained in view of the decision by the Board of Appeals and Interferences.

Ex Parte Quayle

4. This application is in condition for allowance except for the following formal matters:

This application is in condition for allowance except for the presence of claims 7-9 and 16-18, which were affirmed by the Board of Appeals and Interferences, and for the presence of claims 10-11, which are directed to inventions non-elected with traverse in the telephone conversation of 25 April 2006, summarized in the Office Action mailed on 12 May 2006. A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter. Failure to take action during this

period will be treated as authorization to cancel the noted claims by Examiner's Amendment and pass the case to issue. Extensions of time under 37 CFR 1.136(a) will not be permitted since this application will be passed to issue.

A. Claims 1-6 and 12-15 are directed to an allowable apparatus.

B. As noted in MPEP § 821.04(b), where claims directed to a product and to a process of making and/or using the product are presented in the same application, applicant may be called upon under 35 U.S.C. 121 to elect claims to either the product or a process. See MPEP § 806.05(f) and § 806.05(h). The claims to the nonelected invention will be withdrawn from further consideration under 37 CFR 1.142. See MPEP § 821 through § 821.03. However, if applicant elects a claim(s) directed to a product which is subsequently found allowable, withdrawn process claims which depend from or otherwise require all the limitations of an allowable product claim will be considered for rejoinder. All claims directed to a nonelected process invention must depend from or otherwise require all the limitations of an allowable product claim for that process invention to be rejoined. Upon rejoinder of claims directed to a previously nonelected process invention, the restriction requirement between the elected product and rejoined process(es) will be withdrawn.

Where the application as originally filed discloses the product and the process for making and/or using the product, and only claims directed to the product are presented for examination, applicant may present claims directed to the process of making and/or using the allowable product by way of amendment pursuant to 37 CFR 1.121. In view of the rejoinder procedure, and in order to expedite prosecution, applicants are

encouraged to present such process claims, preferably as dependent claims, in the application at an early stage of prosecution. Process claims which depend from or otherwise require all the limitations of the patentable product will be entered as a matter of right if the amendment is presented prior to final rejection or allowance, whichever is earlier. However, if applicant files an amendment adding claims to a process invention, and the amendment includes process claims which do not depend from or otherwise require all the limitations of an allowable product, all claims directed to that newly added invention may be withdrawn from consideration, via an election by original presentation (see MPEP §821.03).

Amendments submitted after allowance are governed by 37 CFR 1.312. Amendments to add only process claims which depend from or otherwise require all the limitations of an allowed product claim and which meet the requirements of 35 U.S.C. 101, 102, 103, and 112 may be entered (*emphasis added*).

B. Claims 10-11 are method claims that will be rejoined upon proper amendment to encompass subject matter commensurate in scope with the allowable apparatus.

C. Claims 7-9 and 16-18 are drawn to a patentably distinct and obvious apparatus and therefore will NOT been rejoined.

5. Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 25 USPQ 74, 453 O.G. 213, (Comm'r Pat. 1935).

6. As noted above, a shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert T. Crow whose telephone number is (571)272-1113. The examiner can normally be reached on Monday through Friday from 8:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave T. Nguyen can be reached on (571) 272-0731. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Robert T. Crow
Primary Examiner
Art Unit 1634

/Robert T. Crow/
Primary Examiner, Art Unit 1634